

REMARKS

Applicants have received and reviewed the Final Office Action dated November 4, 2003. By way of response, Applicants have amended claims 1, 8, 9, 11, 12, 15, 16, 24, 33 and 47 and canceled claim 21. No new matter is presented. Claims 1-9, 11-12, 15-20, 23-33 and 35-47 are pending in this application.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

These amendments and remarks should be entered because it will place the application in form for allowance or in better form for appeal.

The independent claims, claims 1, 24, 33 and 47 have been amended to include the recitation that the composition includes no added strong inorganic acid. Support for this amendment can be found, for example, on page 13, lines 12-21 of the specification.

The Examiner reiterated that various claims were in need of corrections. The Examiner pointed to claims 8, 9, 11, 12, 15 and 16. Each of these claims has been amended, as requested by the Examiner.

35 U.S.C. 102 (b) Rejections

Claims 1-9, 11-12, 17-21, 23-31, 33, 35, 42-46 were rejected as anticipated by Carr et al. (WO 98/28267) for the reasons in the Office Action dated March 26, 2003, and for additional reasons.

The independent claims, claims 1, 24 and 33 have been amended to include the recitation that the composition includes no added strong inorganic acid. This recitation, of no added strong inorganic acid, was previously presented in claim 21.

The Examiner addressed claim 21 on page 4 of the Office Action dated March 26, 2003. Applicants disagree that Carr et al. teach a composition free of added strong inorganic acids. As the Examiner points out on page 4 of the Office Action, and Applicants agree, Carr et al. clearly teach use of strong organic acids. However, Carr et al. also teach the use of strong inorganic acids. The Examiner cites In re Sivaramakrishnan, 213 USPQ 441 (CCPA 1982); Applicants do not understand how this case would affect the issue at hand. In re Sivaramakrishnan discussed that a single element, provided in prior art reference in a list of over 70 possible elements, is

deemed to be disclosed, and thus the reference anticipated the claims at issue. This decision does not apply to the pending application, where the reference Carr et al. discloses the possibility of inorganic and organic acids and where the pending claims specifically recite "no added strong inorganic acid". Carr et al. does not disclose a composition that is specifically free of strong inorganic acid.

There is no teaching in Carr et al. of having a composition with no added strong inorganic acids. Merely because two ingredients are listed as being possibly included in a composition does not support that there is a specific teaching of avoiding one of the ingredients.

Indeed, Applicants contend that disclosure of every element recited in the amended claims is not found in Carr et al. To anticipate, every element and limitation must be found in the reference, arranged as in the claims. Brown v. 3M, 60 USPQ2d 1375 (Fed. Cir. 2001).

Carr et al. cannot anticipate the pending claims, at least because there is no teaching of a composition being free of added strong inorganic acid (claim 1), a method of making a composition free of added strong inorganic acid (claim 24), or a method of reducing the population of microorganisms on an object using a composition free of added strong inorganic acid (claim 33).

At least for these reasons, claims 1-9, 11-12, 17-21, 23-31, 33, 35, 42-46 are not anticipated by Carr et al. and withdrawal of the rejection is requested.

35.U.S.C. 103 (a) Rejections

Claims 1-9, 11-12, 15-21, 23-33, 35-47 were rejected as unpatentable over Carr et al. in view of Hei (U.S. Patent No. 6,024,986) and Richter et al. (WO 00/30690).

As discussed above, claims 1, 24 and 33, and claim 47, have been amended to include the recitation that the composition includes no added strong inorganic acid. The teachings of Carr et al. were also discussed above. Neither Hei nor Richter et al. provide the missing disclosure or suggestion of having a composition and uses thereof as recited by the now-amended, pending claims, particularly, of such a composition being free of added strong inorganic acid. There is no suggestion, in any combination of Carr et al., Hei, and Richter et al. of a composition having about 0.01 wt-% to about 10 wt-% mono-or-diester dicarboxylate, about 0.01 wt-% to about 10 wt-% hydrogen peroxide, about 90 wt-% to about 99.98 wt-% water and being free of added strong inorganic acid, with the composition exhibiting antimicrobial activity against *Bacillus*

cereus, *Bacillus subtilis*, or *Chaetomium funicola* upon contacting the microbe with the composition for at least 5 seconds at a temperature between about 0 °C and about 100 °C.

At least for these reasons, claims 1-9, 11-12, 15-21, 23-33, 35-47 are not anticipated by Carr et al. and withdrawal of the rejection is requested.

SUMMARY

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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